domiciled in California, was adopted by F pursuant to a provision of the California Civil Code. (CAL. CIV. CODE. § 230). X is now made defendant to a bill for the partition of lands in Illinois. The complainants, sisters of F, allege their heirship to F's lands. *Held*, that X succeeds to F's lands as the adopted son of F. *McNamara* v. *McNamara*, 135 N. E. 410 (Ill.)

For a discussion of the principles involved, see NOTES, *supra*, p. 83.

CONSTITUTIONAL LAW — TRIAL BY JURY — TERRITORIES OF THE UNITED STATES: PORTO RICO. — The plaintiff in error was convicted in the courts of Porto Rico for criminal libel. Under the law of Porto Rico this offence is a misdemeanor and a defendant prosecuted for a misdemeanor is not entitled to a trial by jury. (PORTO RICO, CODE. CR. PRO., § 178; 1904 PORTO RICO LAWS, 130.) The plaintiff in error then sued out a writ of error from the United States Supreme Court alleging a violation of the Sixth Amendment. *Held*, that the judgment be affirmed. *Balzac* v. *Porto Rico*, 42 Sup. Ct. Rep. 343.

The Constitution of its own force applies to "incorporated" territories. *Rassmussen* v. *United States*, 197 U. S. 516. It does not apply to "unincorporated" territories. *Downes* v. *Bidwell*, 182 U. S. 244; *Hawaii* v. *Mankichi*, 190 U. S. 197. What will work an incorporation of a territory is by no means clear. At any rate the Supreme Court was clear that by the treaty with Spain Porto Rico was not "incorporated." *Downes* v. *Bidwell*, *supra*. The question the principal case presented was whether the Organic Act of 1917 allowing Porto Ricans to become citizens of the United States had worked such a change that trial by jury was now guaranteed to Porto Ricans. See 39 STAT. AT L. 951. Congress can of course give the provisions of the Constitution the effect of a statute in territories to which the Constitution does not extend *ex proprio vigore*. See C. C. Langdell, "The Status of Our New Territories," 12 HARV. L. REV. 365, 387 n. But this was not done. See 39 STAT. AT L. 951. Arguably the Organic Act so tied Porto Rico to the United States that it became "incorporated." *Cf. Rassmussen* v. *United States*, *supra*. But as the law now stands, on the authority of the instant case, only a clear expression of legislative intent will induce the Supreme Court to recognize the "incorporation" of non-continental territories.

CONSTRUCTIVE TRUST — CONVEYANCE *INTER VIVOS* — EFFECT OF CONFIDENTIAL RELATIONSHIP ON BURDEN OF PROOF. — A, old and feeble, lived with a younger woman, B, on intimate terms. A conveyed her property to B under an unstated "arrangement." A died. C, A's daughter and residuary devisee, demanded a conveyance by B to C. B admitted the relationship between herself and A and did not allege consideration for the conveyance, nor did she explain the arrangement under which she acquired the property. The lower court decreed that there was no "implied" trust. *Held*, that the decree be reversed. *Berthelot* v. *Isaacson*, 278 Fed. 921 (5th Circ.).

Proof of no more than relationship of intimacy and confidence between a donor and a donee is no ground for imposing a constructive trust even though the donor be an old and feeble person. See PERRY, TRUSTS, 4 ed. § 210. If, however, undue influence is superadded, equity will step in to prevent the donee's unjust enrichment. *Cannon* v. *Gilmer*, 135 Ala. 302, 33 So. 659. See PERRY, *op. cit.* § 210. See Roscoe Pound, "The Progress of the Law — Equity," 33 HARV. L. REV. 420. Some courts in applying this rule have held that once the existence of a confidential relationship is proved, the burden of showing complete fairness is thrown on the donee.

Coburn v. *Shilling*, 138 Md. 177, 113 Atl. 761. See *Cannon* v. *Gilmer*, *supra*. This seems unduly hard on the donee. The confidential relationship alone is of no probative force in showing improper circumstances attending a gift. On the other hand, gifts entirely proper may be upset simply because the donee, as conceivably could often be the case, can adduce no affirmative evidence to the effect that the donor was thoroughly advised as to the significance of his acts and acted voluntarily. But where, in addition to the confidential relation, suspicious circumstances attend a gift, as in the principal case an unexplained "arrangement," the courts seem justified in placing the burden of explaining such circumstances upon the donee. *Cf. Coburn* v. *Shilling*, *supra*. What are such suspicious circumstances must depend on the facts of each case. See 4 WIGMORE, EVIDENCE, § 2503.

CONTEMPT OF COURT — INTERFERENCE WITH THE ENFORCEMENT OF A JUDGMENT IN A CRIMINAL CASE. — One X was sentenced by the plaintiff judge to a term of imprisonment for speeding. On his arrival at the parish jail he was set free in consequence of a pardon issued by the defendant mayor. The pardon was invalid. The defendant was adjudged to be guilty of a contempt of court. He sued out a writ of *certiorari*. *Held*, that the decision be reversed. *Hundley* v. *Foisy*, 91 So. 164 (La.).

For a discussion of the principles involved, see NOTES, *supra*, p. 93.

CONTEMPT OF COURT — LIBELLOUS PUBLICATION UPON A PARTY AFTER JUDGMENT. — The plaintiff had brought an action against the defendant to invalidate a ballot taken by the defendant on several grounds, one of them being fraud. The charges of fraud at the trial could not be sustained. The plaintiff then published a circular inaccurately reporting the proceedings and insinuating that the defendant was nevertheless guilty of the alleged fraud. The defendant now seeks an injunction to restrain the distribution of the circular as being a contempt of court. *Held*, that the petition be dismissed. *Dunn* v. *Bevan*, 127 L. T. R. 14.

For a discussion of the principles involved, see NOTES, *supra*, p. 93.

CONSTITUTIONAL LAW POWERS OF THE EXECUTIVE — MARTIAL LAW — DENIAL OF *HABEAS CORPUS* TO CIVILIAN SENTENCED BY MILITARY COMMISSION. — The defendants, civilian citizens, were convicted and imprisoned for offences against military regulations by a military commission occupying Nebraska City in accordance with the governor's proclamation declaring martial law effective there. After the military authorities had been withdrawn, the defendants petitioned the federal court for a rule to show cause why a writ of *habeas corpus* should not be issued, on the ground that their rights under the Fourteenth Amendment had been violated. *Held*, that the petition be dismissed. *U. S. ex rel Seymour* v. *Fisher*, 280 Fed. 208 (D. Neb.).

The governor's discretion in calling out the state militia is not judicially reviewable. *U. S. ex rel McMaster* v. *Wolters*, 268 Fed. 69 (S. D. Tex.); *In re Boyle*, 6 Ida. 609, 57 Pac. 706; *Moyer* v. *Peabody*, 212 U. S. 78. It is also recognized that the military authorities may detain civilian prisoners as a preventive measure. *In re Moyer*, 35 Colo. 159, 85 Pac. 190; *Ex parte Milligan*, 4 Wall. (U. S.) 2, 127. See 26 HARV. L. REV. 636. But the punitive power of martial law is not generally conceded. See 28 HARV. L. REV. 415; 34 HARV. L. REV. 659. Some jurisdictions have denied it, and allowed *habeas corpus* to civilian prisoners sentenced by military authorities. *Ex parte McDonald*, 49 Mont. 454, 143 Pac. 947. *Cf.*